

ORIGINAL

185532

ELLIOTT & ELLIOTT, P.A.

ATTORNEYS AT LAW

721 OLIVE STREET

COLUMBIA, SOUTH CAROLINA 29205

[selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)

SCOTT ELLIOTT

TELEPHONE (803) 771-0555

FACSIMILE (803) 771-8010

April 19, 2007

VIA HAND DELIVERY

Mr. Charles L. A. Terreni

Chief Clerk and Administrator

Public Service Commission of South Carolina

Drawer 11649

Columbia, South Carolina 29211

RE: Comments of United Telephone Company of the Carolinas d/b/a Embarq and Embarq Communications, Inc. Concerning Interim ETC Guidelines  
Docket No. 2006-37-C

Dear Mr. Terreni:

Enclosed for filing in the above-referenced docket are the original and ten (10) copies of the Comments of United Telephone Company of the Carolinas d/b/a Embarq and Embarq Communications, Inc. Concerning Interim ETC Guidelines. Embarq reserves its rights to make such additional comments as are permitted it by the South Carolina rule making process. By copy of this letter, I am serving all parties of record.

Also enclosed is an extra copy of Comments along with a Certificate of Service which I would ask you to date stamp and return to my office via my courier. If you have questions, please do not hesitate to contact me.

Sincerely,

Elliott & Elliott, P.A.



Scott Elliott

SE/jcl

Enclosures

cc: All Parties of Record w/enc.  
H. Edward Phillips, Esq.

ORIGINAL

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

SC PUBLIC SERVICE COMMISSION  
2007 APR 19 PM 4:13  
FILED

In Re: )  
)  
Petition of the Office of Regulatory Staff for a )  
Rule-Making Proceeding to Examine the )  
Requirements and Standards to be Used by the )  
Commission When Evaluating Applications for )  
Eligible Telecommunications Carrier (ETC) Status )  
and When Making Annual Certification of ETC )  
Compliance to the Federal Communications Commission )

Docket No. 2006-37-C

COMMENTS OF UNITED TELEPHONE COMPANY OF THE  
CAROLINAS D/B/A EMBARQ AND EMBARQ COMMUNICATIONS, INC.  
CONCERNING INTERIM ETC GUIDELINES

On March 14, 2007, the Public Service Commission of South Carolina ("Commission") directed interested parties to file comments in this docket concerning whether the Commission should adopt on an interim basis the Federal Communications Commission's ("FCC's") recommended guidelines for designating new eligible telecommunications carriers ("ETCs"). Pursuant to the Commission's directive, United Telephone Company of the Carolinas d/b/a Embarq and Embarq Communications, Inc. (collectively, "Embarq") respectfully submit the following comments for consideration.

Throughout the course of this proceeding Embarq has consistently taken the position that the guidelines adopted by the FCC in CC Docket No. 96-45 on March 17, 2005 should not be adopted without alteration by the Commission. Embarq believes that it is appropriate to modify the FCC's guidelines to ensure that universal service fund ("USF") support is being used for its

intended purpose to preserve and advance affordable telecommunications services to customers in South Carolina. Embarq takes issue with the FCC guidelines because they fail to fully protect the public interest and fail to ensure creamskimming is prevented.

It is true that the FCC guidelines discuss the fact that a creamskimming analysis is to be conducted “[i]n instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company . . . .” However, the FCC’s creamskimming analysis, as discussed by Embarq in its August 1, 2006 comments, is not capable of preventing creamskimming in the applicant’s designated service area. Instead, even under the FCC’s approach, an ETC applicant may still be incented to provide service only in the low-cost portions of the service area for which it seeks certification. Again, Embarq believes that the main purpose of any ETC guidelines, whether they are interim guidelines or final guidelines, is to ensure that any newly designated ETC does not engage in creamskimming.

Further, Embarq believes that ETCs must not be allowed to receive USF support based on the average cost of serving a particular market while those ETCs actually provide service only in that market’s low-cost areas. If an ETC only serves low-cost areas, such newly designated ETC would reap financial benefit from receiving high-cost support that exceeds the economic cost the ETC actually incurs. Therefore, even on an interim basis the Commission must adopt rules that ensure a rigorous public interest analysis that will prevent creamskimming. Embarq submitted proposed ETC guidelines to the Commission on February 21, 2007. Embarq believes that its proposed guidelines for certification could be adopted by the Commission to serve as the interim rules until such time as all of the issues concerning ETC certification and reporting are vetted before the Commission.

As previously mentioned in Embarq's comments filed on August 1, 2006, it has been suggested by some parties in various proceedings that rural ILECs such as Embarq could just disaggregate its own cost below the study area level; that is determine the cost of providing service at the wire center level. The proponents of this suggestion further believe that such disaggregation of costs would avoid any risk of creamskimming by a new entrant. As discussed by Embarq in its August 1<sup>st</sup> comments, the Regulatory Commission of Alaska rejected that argument by noting that there are widely varying population densities and costs existing within a single wire center. Embarq knows that this statement holds true for its designated service area in South Carolina. Because of the difference in population densities in its South Carolina service area, costs do vary for Embarq within a wire center.

Moreover, the FCC also noted in its Highland Cellular order <sup>1</sup> that the creamskimming problem cannot be blamed on ILECs such as Embarq by claiming that these carriers should disaggregate their support. The FCC specifically stated in Paragraph 32 of the *Highland Cellular* order as follows:

32. As we discussed in the *Virginia Cellular Order*, when a competitor serves only the lowest-cost, highest-density wire centers in a study area with widely disparate population densities, the incumbent may be placed at a sizeable unfair disadvantage. Universal service support is calculated on a study-area-wide basis. Although Verizon South did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower cost area, we find on the facts here that designating Highland Cellular as an ETC in these requested wire centers potentially could undermine Verizon South's ability to serve its entire study area. Specifically, because Verizon South's study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost

---

<sup>1</sup> *Federal-State Joint Board on Universal Service/Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Order, 19 FCC Rcd 6422, ¶32 (2004) "*Highland Cellular*".

characteristics of the incumbent and competitor differ substantially. We therefore reject arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent's study area.

Therefore, adopting the FCC's interim guidelines without receiving any evidence as to facts concerning creamskimming and costs associated with providing service at the wire center level could result in the Commission overlooking issues that greatly affect USF distribution. As a result, the Commission cannot rely on the FCC's current guidelines to satisfy itself that an ETC applicant in South Carolina receiving high-cost support is actually serving high-cost areas within the wire center without additional requirements in place.

Embarq believes that if the FCC guidelines are adopted even on an interim basis and without the modification suggested by Embarq, rural ILECs such as Embarq would be prejudiced because the FCC's guidelines do not ensure a rigorous analysis is performed by the Commission to prevent creamskimming. Nor is there any assurance that the newly designated ETC is serving any high-cost areas. If that is the case, then a newly designated ETC operating in a rural area could use USF support to fund greater capacity and signal strength in the low-cost portions of its designated service area, and as a result, place the rural ILEC at a distinct disadvantage.

Embarq does not believe that the Commission desires the consequences described above. Therefore, Embarq again respectfully submits that its proposed ETC guidelines could be adopted on an interim basis to prevent any potential prejudice that could befall rural carriers such as Embarq.

WHEREFORE, based on the foregoing, United Telephone Company of the Carolinas d/b/a Embarq and Embarq Communications, Inc. respectfully request the Public Service Commission of South Carolina not adopt the current FCC guidelines even on an interim basis but instead adopt Embarq's proposed guidelines filed on February 21, 2007, in the interim.

Respectfully submitted on this 19<sup>th</sup> day of April, 2007 by:

A handwritten signature in black ink, appearing to read "Scott Elliott", is written over a horizontal line.

Scott Elliott, Esquire  
Elliott & Elliott, P.A.  
721 Olive Street  
Columbia, SC 29205  
803-771-0555 (P)  
803-771-8010 (F)  
sellott@elliottlaw.us

Edward Phillips, Esquire  
14111 Capital Boulevard  
Wake Forest, NC 27587  
919-554-7870 (P)  
919-554-7913 (F)  
edward.phillips@embarq.com

Attorneys for United Telephone Company  
of the Carolinas d/b/a Embarq and Embarq  
Communications, Inc.

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Petition of the Office of Regulatory Staff for a Rule-Making Proceeding to Examine the Requirements and Standards to be Used by the Commission When Evaluating Applications for Eligible Telecommunications Carrier (ETC) Status and When Making Annual Certification of ETC Compliance to the Federal Communications Commission

DOCKET NO.: 2006-37-C

PARTIES SERVED: Nanette S. Edwards, Esquire  
Office of Regulatory Staff  
P. O. Box 11263  
Columbia, SC 29211

C. Lessie Hammonds, Esquire  
Office of Regulatory Staff  
P. O. Box 11263  
Columbia, SC 29211

William E. DuRant, Jr., Esquire  
Schwartz, McLeod, DuRant & Jordan  
10 Law Range  
Sumter, SC 29150

Steven W. Hamm, Esquire  
Richardson Plowden  
P. O. Drawer 7788  
Columbia, SC 29202

William W. Jones, Jr., Esquire  
Jones Scheider & Patterson, PA  
P. O. Drawer 7049  
Hilton Head Island, SC 29938

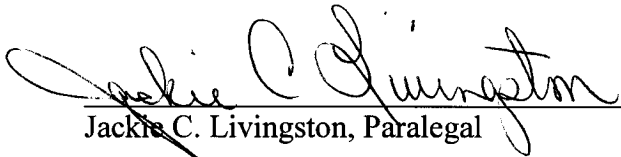
Patrick W. Turner, Esquire  
BellSouth Telecommunications  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201

RECEIVED  
2007 APR 19 PM 4:14  
SC REGULATORY  
COMMISSION

Burnet R. Maybank, III, Esquire  
Nexsen Pruet  
P. O. Drawer 2426  
Columbia, SC 29202

M. John Bowen, Jr., Esquire  
Margaret M. Fox, Esquire  
McNair Law Firm, PA  
P. O. Box 11390  
Columbia, SC 29211

PLEADING: Comments of United Telephone Company of the Carolinas d/b/a Embarq  
and Embarq Communications, Inc.

  
Jackie C. Livingston, Paralegal

April 19, 2007